

March 16, 2010

Col. Jim Konrad, Director
Division of Enforcement
Minnesota Department of Natural Resources
Box 47
500 Lafayette Road
St. Paul, Minnesota 55155-4047

Re: *In the Matter of the Appeal of the Notice of Seizure and Intent to
Forfeit Firearm, CF No. 367041*
OAH Docket No. 3-2000-21153-2

Dear Col. Konrad:

The above-entitled matter came on for a prehearing telephone conference call on March 8, 2010. The Administrative Law Judge, Conservation Officer Julie Siems, Cindy Meyer, and Benjamin Meyer participated in the telephone conference. The parties agreed that no formal hearing would be needed and that the ALJ would make a recommendation in this matter based on the record created during the telephone conference.

During the November 2009 deer hunting season, Chief Sjolander of the Kenyon Police Department advised Conservation Officer Siems that Ben Meyer had shot a deer, despite the fact that he was not allowed to use or possess a firearm because of a conviction for third-degree assault several years ago. Officer Siems independently determined that Mr. Meyer had obtained a license to hunt with a firearm on November 6, 2009. He had registered a deer taken on November 7, 2009. She also checked his criminal history and verified the third-degree assault conviction.

On November 10, 2009, after confirming the above information, Officer Siems ran into Mr. Meyer at a gas station. Mr. Meyer does not dispute that his conviction disqualifies him from using or possessing a firearm. In this conversation, he acknowledged that he had shot the deer with a .50-caliber Thompson/Center in-line muzzleloader, which he said he had purchased after

doing some internet research and concluding that a felon could possess a muzzleloader because no criminal history check was required in order to purchase it. Mr. Meyer also advised Officer Siems that he was on his way to his mother's home to butcher the deer. His mother is Cindy Meyer.

After confirming with Goodhue County law enforcement officers that a muzzleloader is considered a firearm, Officer Siems went to Cindy Meyer's home. Mr. Meyer was in the garage with the deer, and he waited there with another conservation officer. Officer Siems went to the house and advised Ms. Meyer that she was there to take the firearm her son had used to shoot the deer. Ms. Meyer brought Officer Siems to a bedroom and took a muzzleloader out of a gun rack. This gun was a dusty older model (not manufactured by Thompson/Center) that did not appear to have been used recently. Officer Siems told Ms. Meyer that this was not the gun her son had identified. Ms. Meyer then went into a different room and pointed to another muzzleloader kept elsewhere in the house; again, the weapon she identified was old, and it was not made by Thompson/Center.

In a living room on the lower level of the home, Officer Siems observed a black gun case on the floor. The case was spattered with mud and was near a pile of camouflage clothing. Officer Siems asked Ms. Meyer to open the case, and she did. Inside was a newer-model Thompson/Center muzzleloader with a camouflage finish. Officer Siems issued a Notice of Seizure and Intent to Forfeit a Firearm, and Ms. Meyer signed the notice acknowledging receipt. She thereafter advised her son, in the presence of Officer Siems, that the citation included instructions on appeal processes for "how to get your gun—I mean, my gun, back."

Ben Meyer maintained in the hearing that he borrowed the gun from his father, who is too ill to use it. Ms. Meyer maintained that she purchased the gun several years ago. This testimony is inconsistent with Ben Meyer's initial statements to Officer Siems that he had purchased the gun recently after doing some internet research and hearing a lawyer on a radio program say that persons convicted of violent crimes could use muzzleloaders because they are not considered firearms in some places.

A third-degree assault is considered a crime of violence under Minn. Stat. § 624.712, subd. 5 (2008). A person who has been convicted of a crime of violence is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime.¹ The law further provides that a DNR enforcement officer must seize firearms possessed in violation of state or federal law or court order.² A firearm is a gun that discharges shot or a projectile by

¹ Minn. Stat. § 609.165, subd. 1a; Minn. Stat. § 624.713, subd. 1(2).

² Minn. Stat. § 97A.223, subd. 1.

means of an explosive, a gas, or compressed air.³ A muzzleloader fits this definition. Moreover, it is not important who originally bought the muzzleloader. The DNR has authority to seize and forfeit firearms that are possessed in violation of the law or court order, regardless of who may own the weapon.

The Department has proved that Officer Siems properly seized a firearm possessed by Mr. Meyer in violation of state law. The Administrative Law Judge accordingly recommends that the Commissioner affirm the citation and forfeiture of the weapon.

I am closing our file in this matter and returning the record. Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final decision. Within those five days, Ben Meyer or Cindy Meyer may comment on this recommendation. The Commissioner must send a copy of the final decision to the Meyers. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.

Sincerely,
s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Encl.

cc: C.O. Julie Siems
Mr. Ben Meyer
Ms. Cindy Meyer

³ Minn. Stat. § 97A.015, subd. 19.